



VARIANCES

Frequently Asked Questions

What is a variance?

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Who grants a variance?

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council. For more information, see [Minn. Stat. § 462.357](#).

When can a variance be granted?

A variance should be granted if strict enforcement of the zoning ordinance as applied to a particular piece of property would cause the landowner “undue hardship.” The landowner is generally entitled to the variance if and only if the applicant meets the statutory three-factor test for undue hardship. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. For more information, see [Minn. Stat. § 462.357](#).

What kind of authority is the city exercising?

A city exercises so-called “quasi-judicial” authority when considering a variance application. This means that the city’s role is limited to applying the legal standard of undue hardship to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance should be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

What is undue hardship?

Undue hardship is a legal standard set forth in law that cities must apply the when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute undue hardship, all three factors of the test must be satisfied. For more information, see [Minn. Stat. § 462.357](#).

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Consult your attorney for advice concerning specific situations.

What are the undue hardship factors?

The first factor is that the property cannot be put to a reasonable use without the variance. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line, or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land, and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

What about economic considerations?

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create an undue hardship. Rather, an undue hardship exists only when the three statutory factors are met.

Can a city grant a use variance?

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed "use variances" as opposed to "area variances" from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located. For more information, see [Minn. Stat. § 462.357](#).

Is a public hearing required?

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the undue hardship factors.

What is the role of neighborhood opinion?

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the

statutory undue hardship factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

What is the role of past practice?

While past practice may be instructive, it cannot replace the need for analysis of all three of the undue hardship factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

When should a variance decision be made?

A written request for a variance is subject to Minnesota's 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval. For more information, see [Minn. Stat. § 15.99](#).

How should a city document a variance decision?

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should create or direct that a written statement explaining the decision. The written statement should explain the variance decision, address each of the three undue hardship factors and list the relevant facts and conclusions as to each factor.

Can meeting minutes adequately document a variance decision?

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

Can a city attach conditions to a variance?

By law, a city may impose conditions when it grants variances to insure compliance and to protect adjacent properties. Any such conditions should relate back to the subject of the variance request. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the affect of excess height. For more information, see [Minn. Stat. § 462.357](#).

What happens to the variance once granted?

A variance once issued is a property right that "runs with the land" so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.